



88018802

# STATEMENT PREPARATION PLAN

## POWDER RIVER COAL REGION ROUND I SUPPLEMENTAL EIS



BUREAU OF LAND MANAGEMENT  
SALT LAKE CITY DISTRICT OFFICE

APRIL 1987

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# **INTRODUCTION**



## INTRODUCTION

This Statement Preparation Plan is the guide for people working on the Powder River Round I Supplemental EIS. It supplements existing federal coal management regulations, Bureau of Land Management (BLM) coal program directions, and other legal and regulatory documents and requirements.

The Plan defines the steps through which the BLM plans to meet the requirements of the Secretary of the Interior's coal management program. The schedule contained in this Plan aims for a Secretarial decision on this effort by November 1988. In addition, this Statement Preparation Plan describes the project's organization, the document's format, and the plan for public involvement.

## PURPOSE AND ORGANIZATION







## **PURPOSE AND ORGANIZATION**





## 1.0 PURPOSE AND ORGANIZATION

### 1.1 Purpose:

This Supplemental EIS is being prepared by Montana BLM in response to a Federal District Court order (CV-82-116-BLG-JFB) issued by Judge James Battin on October 6, 1986. That order suspended operations on all Montana leases issued in the 1982 Powder River Round I Sale (except maintenance leases M54711, M54712, M54713) pending completion of a Supplemental EIS. The Supplement will address the possible economic, social, and cultural impacts to the Northern Cheyenne Reservation from issuing Powder River Round I federal coal leases in Montana. Appendix 1 provides more detailed information on the content of the Court order. In addition, the Supplement will include an analysis of possible economic, social, and cultural effects to the Crow Reservation from Round I leasing. Figure 1 shows the Powder River Coal Region of Montana, the Crow and Northern Cheyenne Reservations, and existing coal mines in the Region. It also shows the location of Round I federal coal tracts in Montana.

In completing this project, BLM will fulfill the requirements of the Court order as well as its activity planning obligations as required under NEPA, FCLAA, and other pertinent activity planning requirements.

### 1.2 Organization

**Project Supervisor** — Miles City District Manager, Mat Millenbach. The Project Supervisor is the line manager responsible for ensuring that the project schedule is met and that the EIS meets appropriate planning standards and the intent of the court order. He ensures that appropriate coordination occurs throughout the process and sees that matters requiring policy decisions are dealt with on a timely basis.

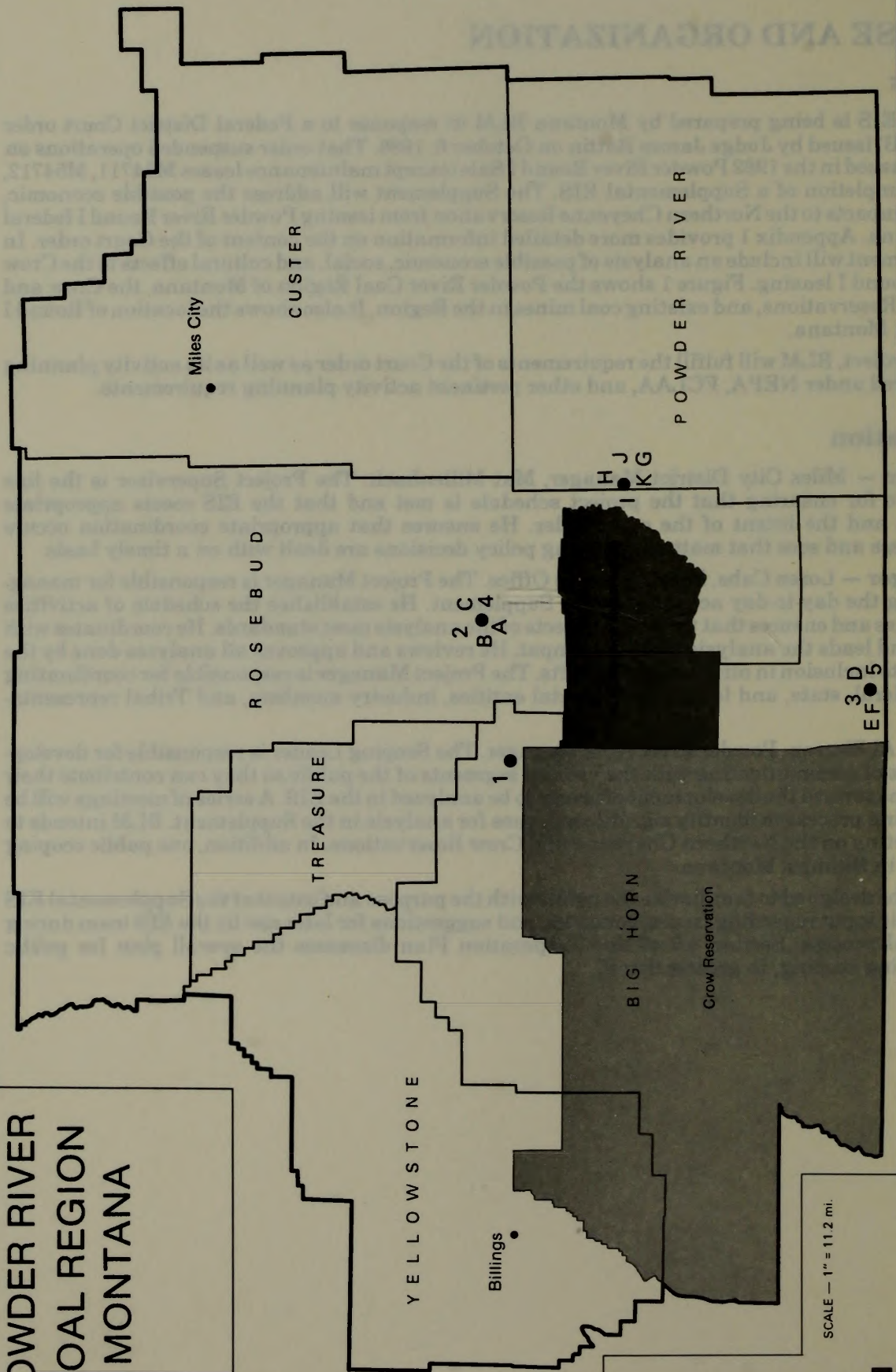
**EIS Project Manager** — Loren Cabe, Montana State Office. The Project Manager is responsible for managing and coordinating the day-to-day activities of the Supplement. He establishes the schedule of activities throughout the process and ensures that technical aspects of the analysis meet standards. He coordinates with the scoping leader and leads the analysis of scoping input. He reviews and approves all analyses done by the team members prior to inclusion in official review drafts. The Project Manager is responsible for coordinating with appropriate federal, state, and local governmental entities, industry members, and Tribal representatives.

**Scoping Leader** — Al Pierson, Powder River Area Manager. The Scoping Leader is responsible for developing an orderly means of communicating with the various segments of the public so they can contribute their opinions and concerns toward the development of issues to be analyzed in the EIS. A series of meetings will be held during the scoping process to identify significant issues for analysis in the Supplement. BLM intends to hold at least one meeting on the Northern Cheyenne and Crow Reservations. In addition, one public scoping meeting will be held in Billings, Montana.

These meetings will be designed to familiarize the public with the purpose and intent of the Supplemental EIS and to encourage their input regarding issues, concerns, and suggestions for later use by the EIS team during the actual analytical process. Section 4.0 of this Preparation Plan discusses the overall plan for public participation, including scoping, in greater detail.



# POWDER RIVER COAL REGION MONTANA



## Existing Coal Mines

1. Absaloka
2. Big Sky
3. Decker
4. Rosebud
5. Spring Creek

## Powder River Round I Coal Tracts — Montana

- |                   |                  |
|-------------------|------------------|
| A. Colstrip A & B | G. Cook Mountain |
| B. Colstrip C     | H. Coal Creek    |
| C. Colstrip D     | I. Decker-Birney |
| D. Spring Creek   | J. N.W. Otter    |
| E. West Decker    | K. S.W. Otter    |
| F. North Decker   |                  |

**FIGURE 1**



## **SCHEDULE AND PROCESS**





## 2.0 SCHEDULE AND PROECSS

### 2.1 Timetable

Table 1 presents an overview of the major efforts and dates associated with completion of the Supplemental EIS. Figure 2 shows this schedule in graphic form; Table 1 and Figure 2 appear at the end of Section 2.0. This schedule is designed to be responsive to an expeditious completion of the Supplement while, as ordered by the Court, meeting Bureau activity planning responsibilities.

### 2.2 Process

The following step-by-step descriptions provide a more complete explanation of the overall process and schedule. The Step numbers correspond to those shown in Figure 2, "Key Dates."

**STEP 1 —** A major part of BLM's baseline assessment of the Northern Cheyenne Reservation is contained in a report entitled "Social and Economic Effects of Coal Development on the Northern Cheyenne Tribe" (1986) which was completed under contract by BLM. This report is designed to provide a comprehensive, current, and accurate picture of baseline economic, social, and cultural conditions on the Northern Cheyenne Reservation during the period 1970-1985. It describes those conditions and assesses the role that off-Reservation coal development played in economic, social, and cultural changes to the Reservation during that same period. The study was completed with the assistance of, and review by, the Northern Cheyenne Tribe.

**STEP 2 — Input/Output Model, Powder River Region.** A computerized input/output (I/O) model for the Powder River Region of Montana was developed under contract by BLM. The model is designed to assess changes in the regional economy as a result of changes in regional coal activity. In addition, the model provides analysis of regional impacts specific to Indian Reservations by including input/output data for the Northern Cheyenne and Crow Reservations in the I/O model. Consequently, the model can be used to determine the level of economic impacts likely to be experienced by each Reservation as a result of off-Reservation coal development.

**STEP 3 — Powder River Regional Coal Team Meeting (RCT).** On December 4, 1986, the Powder River RCT met in Billings, Montana. The Project Manager explained the modeling process that will be used in the Supplemental EIS and answered questions from the RCT members and the public about the project schedule.

**STEP 4 — Regional "Gravity" Model.** Montana BLM has recently completed a computerized model for apportioning incoming population to individual communities within the Powder River Region. As such, this model will enable BLM to estimate the extent to which communities, both on and off-Reservation, may experience population growth as a result of employment opportunities associated with regional coal development.

**STEP 5 — Indian I/O Data Collection.** In 1987, a BLM funded contract was completed for collection of I/O data on the Crow and Northern Cheyenne Reservations. This Reservation-specific data has been put into the regional I/O model (see STEP 2) so that the model can predict economic impacts to both Reservations as a result of off-Reservation federal coal development in the Powder River Region. The effort, comprised of 124 interviews of households and businesses, was completed with the assistance of both Tribes.

**STEP 6 — I/O Model User's Manual and Model Calibration.** Montana BLM has recently contracted for development of a comprehensive User's Manual for the I/O model. The User's Manual will ensure consistency in the manner in which the I/O model is used in this Supplement and in future BLM activity planning in the Powder River Coal Region of Montana and Wyoming. This contract effort also provides for minor updating of the model to enhance its capability to predict economic changes within the Region as a result of coal development.

**STEP 7 — Public Scoping Meetings.** Letters will be mailed to interested federal and state agencies as well as local, Tribal, and industry representatives explaining the Supplemental EIS and the scoping process. Meetings will be held on both Reservations to hear Tribal concerns and comments regarding economic, social, and cultural issues associated with Round I federal coal leasing. In addition to the Reservation meetings, one meeting will be held in Billings, Montana, to hear economic, social, and cultural concerns and comments from federal, state, and local entities, as well as industry representatives. Section 4.0 of this Preparation Plan describes the public participation process in greater detail.



**STEP 8 — Analysis of Public Input.** This step provides for analysis of public concerns that surface during the scoping process. The analysis allows the EIS team to better understand which economic, social, and cultural topics are of particular public concern and to emphasize them accordingly, consistent with the Bureau's activity planning procedures.

**STEP 9 — Development of Baseline Assumptions/Project Inputs.** This effort will determine the Baseline forecast (i.e., no new federal leasing) for the Supplemental EIS. This step is necessary as a "base" against which Round I federal coal-related impact forecasts are measured. The baseline forecast will require coordination among Tribal, industry, and state/federal/local representatives in developing a reasonable scenario of long-term trends and specific projects as inputs to the economic modeling process.

**STEP 10 — I/O and Gravity Model Computer Runs.** This step involves completion of the computer work necessary to forecast impacts from development of the Round I Montana coal tracts. Impact runs will be generated for each of the Montana tracts that were analyzed in the original Round I EIS and will be compared to the baseline forecast. Similarly, impact runs for each multitract leasing alternative will be developed and compared to the baseline forecast to determine regional impacts, by alternative.

**STEP 11 — Complete Draft Supplemental EIS.** The team will complete a draft Tract Profile Package as well as a draft Regional Supplemental EIS that describes the possible economic, social, and cultural impacts from each alternative contained in the original Powder River I EIS. Section 3.0 FORMAT (and Appendix 2) provides a chapter-by-chapter level format description of the Tract Profile Package and the Supplemental EIS.

**STEP 12 — RCT Meeting.** A Powder River RCT meeting is tentatively scheduled for October 1987. The Project Manager will brief the RCT on the Supplemental EIS.

**STEP 13 — Typeset, Print, and Distribute Draft Supplemental EIS.** This will be handled by the MSO Printing and Graphics Section. The two products available for public review will be a draft Tract Profile Package and a draft Regional Supplemental EIS.

**STEP 14 — File Federal Register Notice and File Draft With EPA.**

**STEP 15 — Public Review Period.** This step provides a 60-day general review and comment period on the draft Tract Profile Package and Regional Supplemental EIS.

**STEP 16 — Analyze Public Comments.** The EIS team will review all comments, answer them in writing, and make appropriate revisions in the draft Tract Profile Package and Regional Supplemental EIS.

**STEP 17 — Print and Distribute Final.** MSO Printing and Graphics Section will handle this workload.

**STEP 18 — Federal Register Notice.** File Final Supplemental EIS with EPA.

**STEP 19 — Thirty-day Protest Period.** Issue Final Supplement.

**STEP 20 — Draft Secretarial Issue Document (SID).** The Draft SID will be prepared to assist the Secretary in making a regional coal leasing decision and to provide a public Record of Decision as required by 40 CFR 1505.

**STEP 21 — Washington Office Review and Revision of SID.**

**STEP 22 — Department of Interior Review and Revision of SID.**

**STEP 23 — Secretarial Decision.** The Secretary shall reconsider whether all Montana leases issued in the April 1982 sale should have been issued and decide whether additional mitigating measures should be attached to the leases.



**TABLE 1**  
**Timetable**  
**Supplemental EIS — Powder River I**

Complete Indian Input/Output Data Collection	January 1987
Complete Gravity Model	February 1987
Complete User's Manual — Input/Output Model	April 30, 1987
Complete Scoping — Crow & Northern Cheyenne	March/April 1987
Develop Baseline Assumptions — Supplement	May 1987
Complete Gathering of Model Inputs for Gravity and Input/Output Models	May 30, 1987
Complete Computer Runs from Gravity and Input/Output Models for:	October 23, 1987
— Baseline Forecasts	
— Tract Reports (one for each tract)	
— Regional Analysis	
Complete Draft Supplement EIS	December 31, 1987
Typeset/Print/Distribute Draft for Review	January 29, 1988
Review Completed (60-day Review)	April 12, 1988
Revision Completed	May 30, 1988
Final Supplemental EIS Filed with EPA	July 8, 1988
30-day Protest Period — Final Issued	August 8, 1988
Complete Draft Secretarial Issue Document	September 8, 1988
Complete Washington Office Review/Revise Draft Secretarial Issue Document	October 6, 1988
Complete Department of Interior Review and Revise Draft Secretary Issue Document	October 28, 1988
Secretarial Decision	November 11, 1988
<i>Federal Register</i> Notice of Decision	November 18, 1988





# **FORMAT**





## **3.0 FORMAT**

### **3.1 General**

The Supplemental EIS will be presented in two documents. The first is the Supplemental Tract Profile Package, the second is the Regional Supplemental EIS. Both of these are discussed in detail below. Appendix 2 provides a generalized example of how the Tract Profile Package will be organized on a chapter-by-chapter basis. Appendix 3 provides the same information for the Regional Supplemental EIS.

### **3.2 Tract Profile Package**

This Package will describe the possible economic, social, and cultural impacts resulting from each of the Round I Montana tracts. Chapter I, "Proposed Action," will contain a description of the location (maps), size, annual production tonnage, work force, start dates, and other relevant data for each of the 11 Montana tracts to be analyzed.

Chapter II, "Affected Environment," will consist of the economic, social, and cultural description of the Northern Cheyenne and Crow Reservations with particular emphasis on those components likely to experience changes from off-Reservation coal development. The baseline conditions described in this chapter will be used as the "base" from which impacts will be measured in Chapter III. An important part of the general baseline analysis for the Northern Cheyenne Reservation is the report entitled "Social and Economic Effects of Coal Development on the Northern Cheyenne Tribe" (1986). Section 2.2, Step 1, in this Statement Preparation Plan provides a more complete description of the report. It will be referenced in the "Affected Environment" chapter of the EIS with many of the report's salient points brought forward and discussed in Chapter II. Similarly, a socioeconomic analysis of the Crow Tribe is contained in the "Final Report Socioeconomic Impact Assessment of Shell's Proposed Young's Creek Mine, Crow Indian Reservation, Montana (April 1983)." That report will provide BLM with valuable social and economic information on the Crow Reservation and will also be referenced and discussed in Chapter II.

Chapter III, "Environmental Consequences," will describe possible impacts to the Northern Cheyenne and Crow Reservations from development of each of the Powder River Round I federal coal tracts in Montana. This chapter will contain 11 separate tract impact reports (TIRs); each impact report will be tract-specific. In addition, there will be an analysis of the baseline scenario, which assumes no Round I federal coal leasing, but does include other projects and trends. This format will allow the reader to determine the level of possible economic, social, and cultural impacts resulting from development of individual tracts. The TIRs will begin by focusing on possible employment, population, and income changes to each of the Reservations resulting from off-Reservation Round I coal development.

These factors will be analyzed quantitatively to the extent data are available for the two Reservations. In addition, there exist special circumstances on Indian Reservations regarding Tribal access to state and federal funds. Similarly, there exists a need to acknowledge Tribal government's powers and responsibilities and the different structure of public finances which may affect a Tribe's ability to respond to growth. These differences can affect the provision of Tribal services and the quality of the overall infrastructure. Each TIR will describe the full range of significant impacts expected from the proposed development of the Round I federal coal tracts in Montana. Impacts in the TIRs will be quantified to the extent possible and/or discussed in qualitative terms if full quantification is not possible. Following the impact analysis in each TIR, there will be a discussion of the possible range of tract-specific mitigation that is appropriate to the level of identified impacts.

Chapter IV, "Consultation and Coordination," will describe the efforts of the EIS team at involving outside agencies, organizations, and Tribal representatives in the activity planning process.

Chapter V, "Appendices."

### **3.3 Regional Supplemental EIS:**

This document will describe the possible economic, social, and cultural impacts resulting from various multiple tract scenarios or "Alternatives." The multitract scenarios will be comprised of different combinations of the Montana tracts that were analyzed individually in the Tract Profile Package. The Supplemental EIS is formatted according to Council of Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969.



Chapter I, "Purpose and Need," will describe the general background events and issues leading to the Supplemental EIS and describe the overall focus and purpose of the Supplement.

Chapter II, "Alternatives, Including the Proposed Action," will present information on the alternatives that are analyzed in detail in the impact chapter (Chapter IV). This information includes a map for each multiple tract alternative along with consolidated data on employment levels, production tonnages, and start dates for the tracts contained in each alternative. Impacts will be discussed, in comparative form, among all of the alternatives, including the proposed action, so that distinctions among the alternatives are defined.

Chapter III, "Affected Environment," will repeat the "Affected Environment" chapter of the Tract Profile Package. While this will result in some repetition, the benefits of having this information in the Regional Supplemental EIS document outweigh that consideration.

Chapter IV, "Environmental Consequences," will contain the impact analysis for each of the regional leasing alternatives. Possible impacts to the Crow and Northern Cheyenne will be described for each multitract grouping. Impacts will, as in the TIRs, be quantified to the extent possible or discussed qualitatively in cases where quantification is not possible. The impact analysis will reflect the Secretary of Interior's responsibility to explicitly analyze the potential impacts to Indian Tribes resulting from the lease sale of federal coal tracts lying near the Crow and Northern Cheyenne Reservations. If the results of the analyses forecast adverse impacts, the EIS will discuss a possible range of mitigating measures for the Secretary's consideration that are appropriate to the level of identified impacts.

Chapter V, "List of Preparers."

Chapter VI, "List of Agencies, Organizations, and Persons to Whom Supplement Is Sent."

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Appendices



# **PUBLIC PARTICIPATION PLAN**





## 4.0 PUBLIC PARTICIPATION PLAN

The purpose of the public participation plan is to provide an orderly means of communicating with those interested in the Supplemental EIS and to provide them an opportunity to contribute to it. Public participation will be timed and structured in such a way that public views regarding the significance of particular issues will be integrated into the analytical process. In any public involvement plan there must be orientation and education, followed by exchange of views. Throughout the EIS, media representatives will be kept informed and a posture of openness and assistance to the media will be maintained.

There are three major steps involved in development of an effective public involvement plan:

— **Program Definition.** This Statement Preparation Plan, together with applicable federal regulations pertaining to activity planning, defines the major steps in this supplemental coal activity plan/decision process. These are the primary elements around which the public participation plan is built.

— **Identification of Affected Public Groups.** The public participation plan focuses on the Northern Cheyenne and Crow Tribes. In addition, it will include members of the general public and involved federal, state, and local agencies, as well as industry representatives.

— **Public Participation Objectives.** This plan has the following major objectives:

- a. Ensure that the information and analysis upon which federal coal leasing decisions are to be based are technically sound.
- b. Ensure that the results of public involvement efforts are evaluated, to the extent possible, and used in the assessment of possible impacts resulting from Powder River Round I federal coal leasing.

### 4.1 Scoping

The purpose of scoping is to identify significant issues and concerns that are considered for analysis in the Supplemental EIS.

The scoping on this Supplement will focus on the possible economic, social, and cultural issues and concerns regarding possible impacts to the Northern Cheyenne and Crow Reservations from the Powder River Round I federal coal lease sale in Montana.

Scoping meetings will be held as an effective means to help further identify significant issues and concerns. In addition, a considerable amount of Reservation-specific economic, social, and cultural information has been gathered that will complement the scoping and analysis process by allowing for a more indepth analysis of those issues and concerns that are identified through the scoping process. A scoping package has been distributed to interested parties as a means of obtaining written comments from groups and individuals.

Below are the more important actions associated with the scoping process. Appendix 4 provides a detailed scoping schedule and a list of interested agencies, groups, and individuals:

- a) Publish a Notice of Intent to prepare a Supplemental EIS in the *Federal Register* (completed March 3, 1987, F.R. 6396) and a media announcement for the regional media;
- b) Invite the participation in the scoping process of affected Federal, State, and local agencies, the Northern Cheyenne and Crow Indian Tribes, members of the coal and power generation industry, and other interested persons;
- c) Request the Bureau of Indian Affairs to participate as a cooperating agency;
- d) Hold public scoping meetings (currently planned for Billings, Lame Deer, and Crow Agency, Montana);
- e) Hold scoping meetings with various interested local parties, including Tribal Councils, County Commissioners, and individuals;
- f) Distribute a scoping materials package to elicit written comments from interested groups and individuals;
- g) Analyze scoping results; and
- h) Prepare a scoping issue paper that focuses on appropriate economic, social, and cultural issues that were identified during scoping. These issues will then be analyzed in the EIS.



## 4.2 Related Environmental Efforts

No other Federal coal EISs or EAs for the Powder River Region of Montana are in preparation at the present time, although a BLM land use plan, the Powder River Resource Management Plan, has been completed for this area. If the Powder River Regional Coal Team recommends additional federal coal leasing to the Secretary of the Interior, a Powder River Round II EIS could be prepared by BLM at some future date.

## 4.3 Public Review of Draft EIS

The Draft Regional Supplemental EIS will be made available to the public and to all parties known to be interested or who request a copy. A news release to regional media and a *Federal Register* Notice will provide public notice of the availability of the Draft EIS. An opportunity for a public hearing on the draft will be provided. All comments on the Draft EIS will be addressed in writing in the Final Supplemental EIS.

## 4.4 Decision Notification

Federal District Court in Billings, Montana, has ordered preparation of this Powder River Round I Regional Supplemental EIS. This document is required to supplement the original Powder River Round I Final EIS. Upon completion, this Supplement will be used by the Secretary of the Interior to assist in his reconsideration of whether all Round I Montana leases should have been issued and whether additional mitigation measures should be imposed. This determination is currently planned for late 1988, following completion of the final EIS.

Public notice of all decisions stemming from this Supplemental EIS process will be made through media news releases. The Powder River Regional Coal Team will be kept apprised of all major activities.



## **APPENDICES**





**APPENDIX 1**  
**Federal District Court Order**





OCT 6 1986

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

LCU ALEKSICH, JR. CLERK

By Martha M. Beck  
Deputy Clerk

THE NORTHERN CHEYENNE TRIBE,

Plaintiff,

-vs-

DONALD HODEL, Secretary of the  
Interior; THE UNITED STATES  
DEPARTMENT OF THE INTERIOR,

Defendants.

and

WESTERN ENERGY COMPANY, a  
corporation; WESCO RESOURCES,  
INC.; and THERMAL ENERGY COMPANY,Intervenors and  
Defendants.

CV 82-116-BLG-JFB

OPINION AND ORDER

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Presently pending before the Court are motions by the federal defendants and the intervening defendants to alter or amend the judgment entered by the Court on May 28, 1985. For reasons stated below, the Court will amend its judgment.

FACTS AND CONTENTIONS

On May 28, 1985, the Court issued an opinion and order in the above-captioned case, holding that defendants violated the National Environmental Policy Act (NEPA), the Federal Coal Leasing Act Amendments of 1976, and the federal trust responsibility to the Northern Cheyenne Tribe when it issued coal leases on certain tracts of land in Montana without first considering the impact such coal leasing would have on plaintiff Indian Tribe. The Court voided all federal coal leases on tracts



situated in Montana which were issued as the result of the 1982 Powder River Coal Sale.

On October 8, 1985, the Court granted motions by three of the lessees affected by the lease recissions to intervene as defendants for the limited purposes of considering the relief granted and protecting their right of appeal. Those lessees, Wesco Resources, Inc., Thermal Energy Company and Western Energy Company, as well as the federal defendants, argue that voiding the Montana leases is an extreme remedy and not justified in light of the Court's failure to balance the equities involved before it granted relief. Plaintiff argues that the Court's declaration voiding the leases is the only appropriate remedy. It strongly resists any amendment of the judgment.

#### DISCUSSION

Fed.R.Civ.P. 59(e) provides that within ten days after entry of judgment, a motion to alter or amend the judgment may be filed. Such motion is an efficient mechanism to correct a judgment without implicating the appellate process. Clipper Express v. Rocky Mountain Motor Tariff Bureau, Inc., 690 F.2d 1240, 1249 (9th Cir. 1982), cert. denied, 459 U.S. 1227 (1983). It enables the Court to review the remedy granted. In this case, the issue of remedy was not thoroughly addressed by the parties in their motions for summary judgment. The Court now has before it a more complete picture of the relief available and the competing equities implicated by the various options. Thus, the motion to amend the judgment to reflect a more equitable remedy is well-taken.



Summary judgment was entered in favor of plaintiff and against defendants. The Court declared the Montana mineral leases issued at the 1982 Powder River coal sale void and ordered that defendants take action to rescind the leases. The defendants and intervenors seek to alter not the entry of summary judgment but rather the remedy of cancellation. With the exception of Western Energy, the defendants and intervenors request that the leases be suspended not rescinded. Western Energy, however, urges the Court to declare that, with regard to its leases, the environmental impact statement (EIS) prepared by the federal defendants was sufficient because Western Energy's mining operations create no additional impact on the Tribe.

In its May 1985 Memorandum Opinion, the Court stated, ". . . the problem here arises from the fact that a significant segment of information necessary to the EIS was excluded and therefore not considered by the Secretary in the course of making his decision to hold the lease sale." Pp. 42-43. The federal defendants did not comply with the applicable federal law during the leasing process, and they recognize that the Court is obligated to formulate a remedial decree which vindicates the purpose and policies of the applicable federal statutes. Federal Defendants' Memorandum in Support of Motion to Amend Judgment . . . ., p. 2. However, the federal defendants urge the Court to balance the relative hardship and harm to the parties and the public in determining the appropriate relief.

The Court has the power and discretion, after weighing the equities, to fashion a decree which addresses the needs of



this particular case. Avoidance of the leases is an ultimate remedy which may not be necessary to preserve the intent of the federal statutes at issue. The Court has ruled that the EIS is insufficient. However, plaintiff has not shown that avoidance is the only remedy which will protect its interests. The Tribe fails to identify significant harm that will befall it if the leases are stayed during the preparation of the EIS, after which time the federal defendants must evaluate the socioeconomic impacts of the lease sale and determine whether the leases must be cancelled or whether they will have no significant environmental impact. On the other hand, the lessees can show injury if the leases are cancelled.<sup>1</sup> They were the successful bidders at the sale and have expended money to acquire the leases. Although there is presently no great urgency for coal development, the leases are nonetheless valuable to the leaseholders. Thus, a remedy short of cancellation may suffice.

For instance, in Cady v. Morton, 527 F.2d 786 (9th Cir. 1975), the Ninth Circuit enjoined all future operations under coal mining leases approved by the BIA during the preparation of an adequate EIS covering an entire strip mining project. Following completion of the EIS, the Secretary of the Department of the Interior was required to consider approval of the leases and, in so doing, ignore investments or commitments made under the leases. In the face of an inadequate EIS, the Ninth Circuit

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<sup>1</sup>The Court, however, takes notice that the leases were taken subject to the outcome of this litigation. The lessees were remiss in assuming plaintiff would not prevail on the merits and in failing to intervene at a more meaningful time.



found it sufficient to enjoin the mining operations and direct the Secretary to reconsider its position. Similarly, in the case at bar, all mining operations could be enjoined while the Secretary prepares an adequate analysis of the socioeconomic impacts of mining on the Tribe. The Secretary would then be directed to complete an adequate EIS and reconsider its decision to hold the Montana portion of the 1982 Powder River coal sale.

Western Energy argues that the present EIS is sufficient with regard to its leases because its leases are maintenance tracts which would create no additional impacts on the Tribe. The Court is not, however, in a position to make such a declaration. An analysis of the socioeconomic impacts of the coal sale on the Tribe was excluded from the EIS and not considered by the Secretary. A decision whether the maintenance tracts create any additional impacts on the Tribe must be reached by agency experts. The Court's function is simply to review that decision for arbitrariness. Furthermore, the Court made clear in its order allowing intervention that the issue of the adequacy of the EIS is not open for reconsideration. The Secretary breached his duty to investigate and consider the impacts that coal development would have on the Tribe and its land. He must now make such an inquiry. It is not for the Court to decide what those impacts may or may not be.

Noneless, in balancing the possible irreparable injury to the Tribe against the hardship of Western Energy, the Court does not believe that injunctive relief is appropriate during the pendency of the Secretary's analysis. Western Energy is



presently mining on approved mine plans which border the maintenance tracts. Thus, impacts, if any, are presently being felt by the Tribe to some extent. The Tribe has stated that it does not oppose mining. Significantly, if the leases on the maintenance tracts are stayed, the federal coal involved will be permanently bypassed, causing possible detriment not only to Western Energy but also to the Tribe and the public. Should the Secretary find that mining on the maintenance tracts causes significant socioeconomic impacts, the mining could be halted immediately or the impacts mitigated. "Although failure to comply with NEPA will ordinarily call for an injunction halting the challenged action until the Act's requirements are met, in unusual circumstances an application of traditional equitable principles may justify denial or limitation of injunctive relief." Cady, 527 F.2d at 798 n. 12. Furthermore, NEPA "allows for some flexibility in remedy because Congress has mandated compliance with NEPA procedures 'to the fullest extent possible.'" Forelaws on Board v. Johnson, 743 F.2d 677, 686 (9th Cir. 1984). Thus, a stay is not appropriate for the maintenance tracts. Accordingly,

IT IS ORDERED that the federal defendants' and intervening defendants' motion to alter or amend the judgment rendered on May 28, 1985, is granted. The portion of the Court's order of May 28, 1985, declaring the Montana leases void and ordering the Secretary to rescind them is vacated. The relief granted with respect to all leases is amended as follows:

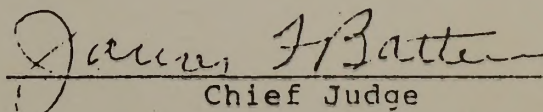


1. All coal operations except those pertaining to leases M54711, M54712 and M54713 are enjoined pending the Secretary's expeditious preparation of a supplemental EIS addressing the cultural, social and economic impact of issuing coal leases near the Northern Cheyenne Indian Reservation. The Secretary shall take the necessary action to suspend the leases pursuant to 30 U.S.C. § 209 and to relieve the lessees of their obligations thereunder, including the obligation to make deferred bonus payments. No bond in an amount equal to the remaining bonus amount owed will be required. Operations on M54711, M54712 and M54713 may go forward. Should the Secretary find, however, that mining on the maintenance tracts causes significant socioeconomic impacts, the mining shall immediately be halted.

2. Upon completion of the supplemental EIS, the Secretary shall reconsider whether all leases, including M54711, M54712 and M54713, should have been issued and whether additional mitigation measures should be imposed. If the Secretary concludes that the leases should not have been issued, he shall rescind them and halt all operations. If the Secretary concludes that the leases should be approved, he shall issue a decision supporting his conclusion and order reinstatement of the leases.

The Clerk is directed forthwith to notify counsel for the respective parties of the making of this order.

Done and dated this 6<sup>th</sup> day of October, 1986.

  
Chief Judge





**APPENDIX 2**  
**Format of Tract Profile Package**





## **TRACT PROFILE PACKAGE**

This is a package containing individual Tract Impact Reports (TIRs). The TIRs are contained in Chapter III, "Environmental Consequences."

## PURPOSE AND NEED

The section begins by describing the major events leading to the 1982 Powder River I Coal Sale, including the tract delineation process, surface owner consent, Regional Coal Team meetings, scoping, public review, draft and final EIS, and Secretarial decision.

This chapter also includes a discussion of the Northern Cheyenne lawsuit and subsequent court decision that requires preparation of a Supplemental EIS. The Supplement's purpose is to analyze possible economic, social, and cultural impacts to the Northern Cheyenne and Crow Reservations.

The point will be made that no other legal objections/flaws pertaining to environmental impact analysis on the Northern Cheyenne Tribe or Reservation have been identified by BLM, the Tribe, or the Court. Consequently, this Supplemental EIS will focus on providing a comprehensive analysis of economic, social, and cultural effects to the Northern Cheyenne and Crow Tribes from leasing of Montana tracts contained in the Round I Powder River federal coal sale.



## **I. PROPOSED ACTION**

This chapter presents a description of the "no action" alternative and of each of the 11 Montana tracts (6 maintenance production, 5 new production) that are analyzed in Chapter III, "Environmental Consequences." It will clearly show each tract's location with respect to both Reservations and will include data on tonnages, mine life, work force, start dates, etc.

## II. AFFECTED ENVIRONMENT

This chapter presents a description of the economic, social, and cultural conditions on the Crow and Northern Cheyenne Reservations that are most likely to be affected by Round I federal coal development. This chapter will have two major divisions: A. Northern Cheyenne; B. Crow. All relevant social, economic, and cultural descriptions will then be presented, by Tribe, under these major divisions. This chapter will incorporate, by reference, the entire recently completed BLM-funded baseline social and economic study on the Northern Cheyenne Reservation, as well as actually presenting relevant portions of that information in the body of the document. Recent studies pertaining to the Crow Reservation will also be incorporated.



### **III. ENVIRONMENTAL CONSEQUENCES**

This chapter is presented in 12 subsections. The first subsection analyzes the affects of the "no action" alternative (i.e., no further federal leasing). The remaining 11 subsections constitute Tract Impact Reports pertaining to each of the 11 tracts described in Chapter I, "Proposed Action" (5 new production tracts, 6 maintenance production tracts). Following the impact analysis in each subsection, there will be a discussion of a range of possible tract-specific mitigation appropriate to the level of identified impacts.

#### IV. CONSULTATION AND COORDINATION



## **V. APPENDICES**

### **APPENDIX 3** **Format of Regional Supplemental EIS**





**APPENDIX 3**  
**Format of Regional Supplemental EIS**





## **REGIONAL SUPPLEMENTAL EIS**

This document is a supplemental regional impact analysis for the Powder River Round I EIS. It provides information pertaining to possible impacts on the Northern Cheyenne and Crow Indian Reservations resulting from Round I federal coal leases.

## **I. PURPOSE AND NEED**

The chapter begins by describing the major events leading to the Powder River I Coal Sale. These include the tract delineation process, surface owner consent, Regional Coal Team meetings, scoping, public review, draft and final EIS, and Secretarial decision.

This chapter also includes a discussion of the Northern Cheyenne lawsuit and subsequent court decision that requires preparation of a Supplemental EIS. The Supplement's purpose is to analyze possible social, economic, and cultural impacts to the Northern Cheyenne and Crow Reservations.

The point will be made that no other legal objections/flaws pertaining to impact analysis on the Northern Cheyenne Tribe have been identified by BLM, the Tribe, or the Court. Consequently, this Supplemental EIS will, as ordered by the Court, focus on providing a comprehensive analysis of economic, social, and cultural effects to the Northern Cheyenne and Crow Tribes from leasing of Montana tracts contained in the Round I Powder River federal coal sale.



## **II. ALTERNATIVES, INCLUDING THE PROPOSED ACTION**

This chapter presents a description of each alternative coal development scenario; alternatives are the same as those used in the Round I Draft and Final EIS. There will be an explanation of why only the Montana tracts in each alternative are analyzed. Descriptions will include, by alternative, tract maps and data on tonnages, start dates, total work forces, etc. Impacts from each of these alternatives will be analyzed in detail in the Supplement's Chapter IV, "Environmental Consequences."

### III. AFFECTED ENVIRONMENT

This chapter uses the same description of "Affected Environment" from the Tract Profile Package (Chapter II). As in the Tract Profile Package, the description of the Northern Cheyenne will be presented first, followed by that for the Crow.



#### **IV. ENVIRONMENTAL CONSEQUENCES**

This chapter presents a detailed impact analysis for each of the alternatives described in Chapter II. Each of these impact analyses will be accompanied by an alternative-specific discussion of an appropriate range of possible ways to mitigate the identified impacts.

## V. LIST OF PREPARERS



**VI. LIST OF AGENCIES, ORGANIZATIONS, AND PERSONS TO WHOM  
SUPPLEMENT IS SENT**

**INDEX** VI. LIST OF AGENCIES, ORGANIZATIONS, AND PERSONS TO WHOM  
SUPPLEMENT IS SENT



## APPENDICES

### APPENDIX 4

#### Scoping Schedule and Distribution List





**APPENDIX 4**  
**Scoping Schedule and Distribution List**





# SCOPING SCHEDULE

TASK	TARGET COMPLETION DATE
Prepare Draft Scoping Schedule	
Review of Scoping Schedule .....	1/30/87
Approve Scoping Schedule .....	2/02/87
Identify Fed., State, Local Agencies and other Interested Publics .....	2/16/87
Formally Request BIA to be a Cooperating Agency .....	2/17/87
Prepare Public Participation Plan .....	2/23/87
Prepare Draft Notice of Intent to Supplement EIS for <i>Federal Register</i> .....	2/06/87
Approve Notice of Intent to Supplement EIS .....	2/16/87
Approve Public Participation Plan .....	3/03/87
Publish Notice of Intent in <i>Federal Register</i> .....	3/06/87
Prepare Scoping Material .....	3/09/87
Approve Scoping Material .....	3/13/87
Prepare and Release Media Announcement on Scoping .....	3/20/87
Prepare Letters to Fed., State, Local Agencies, Indian Tribes and Interested Public Inviting Participation in EIS Supplement .....	3/20/87
Mail Scoping Material and Cover Letters .....	3/20/87
Hold Scoping Meetings (Crow Agency 4/16/87, Billings, 4/23/87, Lame Deer 4/28/87) .....	4/30/87
Meet with County Commissioners (Powder River, Rosebud, Big Horn) .....	4/30/87
Analyze Scoping Results .....	5/15/87
Prepare Scoping Issue Paper .....	5/29/87
Review Scoping Issue Paper and Finalize EIS Supplement Scope	

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